

Notice of Allowability

Application No.

10/812,038

Examiner

Charles A. Marmor, II

Applicant(s)

HOEY ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 28 March 2005 and the telephonic interview of 02 March 2006.
2. ☒ The allowed claim(s) is/are 1-24.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

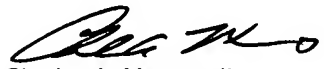
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 03022006.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


Charles A. Marmor, II
Primary Examiner
Art Unit 3736

EXAMINER'S AMENDMENT

1. This Office Action is responsive to the Amendment filed March 28, 2005. The Examiner acknowledges the amendments to claims 1, 2, 5, 9, 10, 13, 17, 18 and 21. Claims 1-24 are pending.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jonathan Spangler on March 2, 2006.

3. The application has been amended as follows:

- a. At claim 1, line 7, --type of-- has been inserted before "characterized".
- b. At claim 9, line 10, --type of-- has been inserted before "characterized".
- c. At claim 17, line 8, --type of-- has been inserted before "characterized".

4. The following is an examiner's statement of reasons for allowance:

No prior art of record teach or fairly suggest a method, article of manufacture, or apparatus for identifying a characterized body tissue located adjacent a conductive element of a probe, as claimed by Applicant, where the *type of* characterized body tissue located adjacent to

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the conductive element is identified based on the phase angle of the applied signal, where the characterized body tissue includes at least one of cortical bone and cancellous bone.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Applicant is now required to submit a substitute Application Data Sheet to correct the following deficiencies: In the response of March 28, 2005 to the objection to the Declaration set forth in the Office Action of September 21, 2004, Applicant has submitted copies of the Declaration and Application Data Sheet filed in parent Application USSN 09/860,648. There is a discrepancy in these two documents where the Declaration includes three inventors and the Application Data Sheet includes the same three inventors, as well as James Marino as a fourth inventor. In a telephone conversation with Jonathan Spangler on March 2, 2006, Applicant's representative explained that the Declaration reflects the correct inventorship as James Marino was removed as an inventor in said parent application. Applicant has agreed to file a substitute Application Data Sheet correcting this discrepancy. The substitute Application Data Sheet, consistent with the Declaration, must be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability" (PTO-37). Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136. Failure to timely file the substitute Application Data Sheet will result in **ABANDONMENT** of the application. The transmittal letter

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accompanying the Application Data Sheet should indicate the date of the "Notice of Allowance" (PTOL-85) and the application number in the upper right hand corner.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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March 2, 2006